IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2361 OF 2004

M/s. Raisoni Exports (India)
Pvt. Ltd. & Anr. ...Petitioners.

V/s

The State of Maharashtra
& Anr. ...Respondents.

Mr. M.M. Jaykar i/b M/s Khaitan & Jaykar for the petitioners.

Mr. Pankaj Sawant with Ms. T.M. Kapadia & Manek Joshi i/b M/s Joy Legal Consultants for respondent No.2.

Mr. A.M. Shringarpure, APP for the State.

CORAM: V.M.KANADE,J.
DATE: 11th April, 2005

P.C.:

1. Heard the learned Counsel for the petitioners and the learned Counsel for respondent No.2.

2. Petitioners are challenging the issuance of process by the Additional Chief Metropolitan Magistrate, 47th Court at Esplanade in a criminal complaint filed by respondent No.2.

3. The learned Counsel appearing on behalf of the petitioners submitted that the learned Magistrate has erred in issuing the process as there was no existing debt or liability on the part of the petitioners towards the respondent No. 2 - Complainants. It is

submitted that the complainants are the agents of M/s Global Container Lines (Bahamas) who were the Owners/Charterers/Managers/Operators of one vessel viz. m.v. "GLOBAL NATALI". It is submitted that the Global Container Lines had entered into a contract with the Petitioners - Company for carrying goods by Sea to Durban on/or about 10th and 11th October, 1996 and, accordingly, the Petitioners - Company entrusted 10 consignments to the original complainants. It is submitted that the freight charges were already paid which was evident from the copy of the Bill of Lading and that as per the general practice a blank cheque was issued to the complainants. It is further submitted that, unfortunately, the vessel carrying the goods caught fire on 25th October, 1995 in mid sea and the complainants, taking advantage of this, filled in the blank cheque and added the date as 25th October, 1996 and also filled in the amount of Rs 22,18,390.56 as freight charges. A summary suit also thereafter was filed by the complainants against the petitioners in which this Court granted unconditional leave to defend. It is submitted that the said vessel had left the shores on 10th October, 1996. It is submitted that there is also no dispute regarding this fact which was evident from the list of documents which are annexed to the complaint by the complainants

themselves which clearly show that the date of Bill of Lading was 10th October, 1996. It is submitted that, therefore, since the freight was already prepaid, there was no question of issuing a cheque dated 25th October, 1996 and this was a conclusive evidence to show that there was no existing debt or liability.

4. In my view, so far as the question regarding the existing debt and liability is concerned, it will be difficult for this Court to go into this question while exercising jurisdiction under section 482 of the Criminal Procedure Code. All questions specifically raised in this petition, therefore, are kept open and the Trial Court is directed to decide all these questions after evidence is adduced by both the parties and decide the issue on its own merits and in accordance with law. It is clarified that merely because petition is dismissed, it does not mean that the contentions raised by the petitioners have not been accepted. Petitioners are exempted from appearing in Trial Court. Petitioners plea may be recorded through their advocate and only at the time of recording statement under section 313 of the Criminal Procedure Code, petitioners may be asked to remain present in Court or on any other occasion where their presence is necessary for the purpose of the

trial.

5. With the above directions, petition is dismissed.

V.M. KANADE, J.